IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13097 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ENGINEERING GENERAL KAMDAR UNION

Versus

SAMIALA METAL ENGINEERING WORKS

Appearance:

1. Special Civil Application No. 13097 of 2000

MR PC MASTER for Petitioner No. 1

Mr. Tejas Barot for M/S TRIVEDI & GUPTA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 04/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Master for the petitioner and Mr. Barot, learned advocate for M/s. Trivedi & Gupta for the respondents. In this petition, the petitioner is challenging the award made by the Industrial Tribunal, Baroda in Reference NO. 50 of 1995 dated 10.4.2000 wherein the tribunal has come to the conclusion that because of raising the preliminary point

by the respondents, the reference is not maintainable and, therefore, same is dismissed.

During the course of hearing, it was submitted by the learned advocate Mr.M aster that the preliminary issue was raised by the respondent first party on the ground that there was settlement arrived at between the parties wherein item no. 6 was providing that if the workman or the union is having any grievance against the management, then, first of all, such workman or the union has to approach the grievance committee constituted under the said settlement and if the said committee is not able to decide suchgrievance or if the committee rejects such grievance, then, the workman or the union has to raise such dispute and, therefore, the reference is bad in law as it was raised by the petitioner without first approaching the grievance committee in respect of the grievance voiced by him in the reference. It was submitted by the learned advocate Mr. Master that the grievance committee constituted under the settlement being one forum to redress the grievance can be approached by the aggrieved workman or the union but that cannot create a bar for raising of an industrial dispute under the ID Act, 1947. In support of his submissions, he relied upon the decision of the apex court in the matter of JAI BHAGWAN Versus THE MANAGEMENT OF THE AMBALA CENTRAL COOPERATIVE BANK LIMITED reported in AIR 1984 SC 286. Relying on the said decision, it was submitted by him that in the said decision, the workman raised dispute against the order of termination without first filing departmental appeal against the order of termination and that is how the contention was raised in that case by the Management that the reference is bad. That aspect was examined by the apex court in the said matter in para 3 of the judgment. He also submitted that in view of the principles laid down by the apex court in the said mater, there is no bar in raising dispute though there is provision made in the settlement , item no.6 in particular and, therefore, the tribunal has committed gross error in rejecting the reference on such a preliminary issue. He has also raised grievance against the tribunal by submitting that though the tribunal rejected the reference on such a preliminary issue, the tribunal has recorded conclusion that the workmen are not entitled for the amount of lay off and their demand is not proper and reasonable. According to him, once the tribunal was of the view that the reference is bad as it has been filed by the workmen without first approaching the grievance committee, then, it was not proper on the part of the tribunal in recording such conclusions on merits and in view of that also, the award made by the

tribunal is required to be quashed and set aside.

On the other hand, learned advocate Mr. Barot appearing for the respondents has submitted that it was agreed upon between the parties by way of settlement that in case of any grievance by the workman or the union, they have to first approach the grievance committee and thereafter, they have to approach the statutory remedy. The purpose and idea in providing such forum was to observe the industrial peace so that the unnecessary dispute may not be raised by the union and that is how the settlement has been arrived at and the same was binding to the union and the workmen and, therefore, the tribunal was right in rejecting the reference on that ground. As regards the observations made by the tribunal on merits, it was submitted by him that these are the facts on record which have been merely referred to by the tribunal and in doing so, the tribunal has committed no error while passing the award.

I have considered the submissions made by both the learned advocates for the parties. The fact remains that there is provision in the settlement, item 6 of which is providing for resolution of the grievance of the workmen or the union by approaching the grievance committee formed under the said settlement. In case of any dispute against the management, as per item no.6 of the said settlement, workmen or the union has to first approach the grievance committee and if the said committee has not been able to resolve the grievance, then, they have to approach the statutory remedy. I have also perused the award. Once the remedy of approaching the grievance committee has been provided, the workmen or the union can approach such committee for an amicable resolution of their grievance but that cannot be considered as a bar for the union or the workmen to raise an industrial dispute which is otherwise statutorily recognized by the provisions contained under the ID Act, 1947 and that aspect has been examined by the apex court in the matter of JAI BHAGWAN Versus THE MANAGEMENT OF THE AMBALA CENTRAL COOPERATIVE BANK LIMITED reported in AIR 1984 SC 286. In para 3 of the said judgment, it has been observed by the apex court as under:

"3. Shri Rohatgi, learned counsel for the Respondent-Bank, was unable to contend that there was even a remote compliance with the principles of natural justice. He was also unable to urge that the Industrial Tribunal had truly applied his mind to the case. He, however, argued that

> the appellant had a remedy against the order of termination of services by way of an appeal to the Board of Management and that his failure to pursue that remedy barred him from raising any Industrial dispute. He also attempted to connect the order of termination of services with the absence of the workman from the bank on August 13 and 14, 1974, on days when his signature was found in the attendance register. We see no substance in either of the submissions. Raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman, which has achieved statutory recognition under the Industrial Disputes Act and we fail to see why the statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy. The attempt of Shri Rohatgi to connect the order terminating the appellant's services with his absence from the bank on August 13 and 14, 1974 is an attempt made before us for the first time. At no earlier stage was the order of termination of services sought to be sustained on the basis of the absence of the workman from the bank on August 13 and 14, 1974. It cannot be done now."

Considering the observations made by the apex court in the aforesaid decisions and considering the law laid down by the apex court therein, and also considering the facts of the present case, here also, merely because some provisions or the remedy has been provided by the Management for approaching the grievance committee as per item no.6 of the resolution, that cannot be considered to be the bar against the union or the workmen for raising of an industrial dispute. In view of that, the reference

has been rightly been referred to for adjudication by the appropriate Government before the tribunal and the tribunal was not right in rejecting the reference on such a ground. I am also of the view that the tribunal was not justified in observing on merits while rejecting the reference on such ground. Thus, the tribunal has committed gross error in rejecting the reference on such ground and also in observing on merits while rejecting the reference on such a ground. According to my opinion, in such circumstances, it is better that the matter is examined by the tribunal on merits after giving reasonable opportunity to the parties. The award dated 10.4.2000 in Reference No. 50 of 1995 is, therefore, required to be quashed and set aside by directing the said tribunal to decide the matter in accordance with law after affording reasonable opportunity to the party to produce the evidence.

In the result, this petition is allowed. The award made by the Tribunal in Reference (IT) No.50 of 1995 dated 10.4.2000 is hereby quashed and set aside and the said reference is restored and it is directed to the said tribunal to decide the entire matter on merits after affording reasonable opportunity to the parties before it to lead evidence. This being an old matter, the parties to the said reference are directed to extend their positive cooperation for expeditious disposal of the said reference and the tribunal also will see to it for expeditious disposal thereof in accordance with the aforesaid directions. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.4.12.2003. (H.K. Rathod,J.)
Vyas